

STATE MS.-DE SOTO CO.
FILED

MAR 1 11 34 AM '00

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:The Gap, Inc.
Real Estate Law Department
900 Cherry Avenue
San Bruno, CA 94066
Attn: Joel Hall, Esq.
501-225-0204BK 1192 PG 505
W.E. HENNINGER, JR., CLERK.NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT is made and entered into as of this 22nd day of December, 1999, by and among SOUTHTRUST BANK, NATIONAL ASSOCIATION, a _____ ("Mortgagee"), OLD NAVY (HOLDINGS) INC., a California corporation ("Tenant") and GOODMAN ROAD/I-55 DEVELOPMENT COMPANY, LLC, an Arkansas limited liability company, ("Landlord").

RECITALS

A. Mortgagee is the holder of a certain note (the "Note") and beneficial interest under a Deed of Trust and Security Agreement (the "Mortgage") dated December 29, 1999, in which Landlord is named as the grantor, which Mortgage was recorded on December 29, 1999, in the Official Records of DeSoto County, State of Mississippi, as Document No. 1176 Bk. 0767. The Mortgage covers certain real property together with all appurtenances thereto and improvements thereon (the "Property") all as more particularly described in **Exhibit A** attached hereto and made a part hereof and which property is commonly known as South Lake Centre, in the City of Southaven, County of DeSoto, State of Mississippi.

B. Landlord is the owner in fee simple of the Property and is the current obligor under the Note.

C. By Lease dated December 22, 1999 (the "Lease"), Landlord leased to Tenant those certain premises (the "Premises") which constitutes or forms a portion of the Property covered by the Mortgage and commonly known as SOUTH LAKE CENTRE, all as more particularly described in said Lease.

D. The Lease is or may become (subject to this Agreement) subordinate in priority to the Mortgage.

E. Tenant wishes to obtain from Mortgagee certain assurances that Tenant's possession of the Premises will not (subject to this Agreement) be disturbed by reason of the enforcement of the Mortgage covering the Premises or a foreclosure of the lien thereunder.

F. Mortgagee is willing to provide such assurances to Tenant upon and subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above, the reciprocal promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do mutually agree as follows:

1. **Ratification.** The Lease now is or shall become upon the mutual execution of this Agreement subject and subordinate in all respects to the Mortgage and to all renewals, modifications and extensions thereof, subject to the terms and conditions of this Agreement. Tenant hereby affirms that the Lease is in full force and effect and that the Lease has not been modified or amended. Mortgagee acknowledges receipt of a copy of the Lease and hereby approves the same.

2. **Landlord's Default.** From and after the date Tenant receives a fully executed copy of this Agreement, Tenant will not seek to terminate the Lease by reason of any act or omission of Landlord until Tenant shall have given written notice of such act or omission to Mortgagee (at Mortgagee's last address furnished to Tenant) and until a period of thirty (30) days shall have elapsed, Mortgagee shall have the right, but not the obligation, to remedy such act or omission, provided however that if the act or omission does not involve the payment of money from Landlord to Tenant and (i) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, or (ii) the nature of the act or omission or the requirements of local law require Mortgagee to appoint a receiver or to foreclose on or commence legal proceedings to recover possession of the Property in order to effect such remedy and such legal proceedings and consequent remedy cannot reasonably be achieved within said thirty (30) days, then Mortgagee shall have such further time as is reasonable under the circumstances to effect such remedy provided that Mortgagee shall notify Tenant, within ten (10) days after receipt of Tenant's notice, of Mortgagee's intention to effect such remedy and provided further that Mortgagee institutes immediate legal proceedings to appoint a receiver for the Property or to foreclose on or recover possession of the Property within said thirty (30) day period and thereafter prosecutes said proceedings and remedy with due diligence and continuity to completion.

3. **Non-Disturbance and Attornment.** So long as Tenant is not in default under the Lease (beyond any period given Tenant to cure such default) as would entitle Landlord to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant thereunder, Mortgagee will not disturb the peaceful and quiet possession or right of possession of the Premises by Tenant nor shall the Lease or its appurtenances be extinguished by reason of any Foreclosure (as hereinafter defined) or otherwise, nor join Tenant as a party in any action or proceeding brought pursuant to the Mortgage except as may be required by applicable law in order to obtain jurisdiction over the Premises (but not to dispossess Tenant therefrom).

In the event that Mortgagee or its successors or assigns, as defined in Paragraph 7 hereof ("Successor Landlord") acquires the interest of Landlord or comes into the possession of or acquires title to the Premises (the "Succession") by reason of the foreclosure (judicial or non-judicial) or enforcement of the Mortgage (including a private power of sale) or the Note or obligations secured thereby or by a conveyance in lieu thereof or other conveyance or as a result of any other means (any or all of the foregoing hereinafter referred to as a "Foreclosure"), then the Lease and all appurtenances thereto shall remain in full force and effect and Tenant shall be bound to Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if Successor Landlord was Landlord under the Lease, and Tenant shall attorn to Successor Landlord as its landlord, such attornment to be effective and self operative, without the execution of any further instruments on the part of either of the parties hereto, immediately upon the Succession; and further, in such event, Successor Landlord shall be bound to Tenant under all of the provisions of the Lease, and Tenant shall, from and after such Succession, have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord thereunder provided, however, that Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of such act or omission to the party who was the then holder of the Mortgage (whether or not such holder elected to cure or remedy such act or omission); or

(b) subject to any offsets (except those expressly permitted under the Lease) or defenses which Tenant might have against any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of the state of facts or circumstances under which such offset or defense arose to the party who was the then holder of the Mortgage (whether or not such holder elected to cure or remedy such condition); or

(c) bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is available to the party who was the holder of the Mortgage at the time of a Foreclosure; or

(e) bound by any amendment or modification of the Lease made without the consent of the party who was the holder of the Mortgage at the time of such amendment or modification, unless such amendment or modification was subsequently affirmed by an intervening holder.

Tenant shall be under no obligation to pay rent to Mortgagee or Successor Landlord until Tenant receives written notice from Mortgagee or Successor Landlord stating that Mortgagee or Successor Landlord is entitled to receive the rents under the Lease directly from Tenant. Landlord, by its execution hereof, hereby authorizes Tenant to accept such direction from Mortgagee or Successor Landlord and to pay the rents directly to Mortgagee or Successor Landlord and waives all claims against Tenant for any sums so paid at Mortgagee's or Successor Landlord's direction. Tenant may conclusively rely upon any written notice Tenant receives from Mortgagee or Successor Landlord notwithstanding any claims by Landlord contesting the validity of any term or condition of such notice, including any default claimed by Mortgagee or Successor Landlord, and Tenant shall have no duty to inquire into the validity or appropriateness of any such notice.

4. Agreement to Release Proceeds or Awards.

(a) **Destruction.** In the event of a casualty at the Premises, Mortgagee shall release its interest in any insurance proceeds applicable to the nonstructural Improvements (as defined in Article 16 of the Lease) installed by Tenant. Mortgagee acknowledges that it has no interest and waives any interest in Tenant's Personal Property (as defined in Article 16 of the Lease), Tenant's signs, the Dish (as defined in Section 2.7 of the Lease), and any safety systems (such as, without limitation, fire and security monitoring and alarm systems) installed at or about the Premises, or any insurance proceeds are payable with respect thereto under either Landlord's or Tenant's policies.

(b) **Eminent Domain.** In the event of a Taking (as defined in Article 20 of the Lease), Mortgagee shall release its interest in that portion of the award to which Tenant is entitled pursuant to Article 19 of the Lease, as well as its interest in so much of the award applicable to the Improvements installed by Tenant as shall be necessary for the purposes of restoration, consistent with Landlord's and Tenant's rights and obligations under Article 20.

5. Notices. All notices, demands, or requests, and responses thereto, required or permitted to be given pursuant to this Agreement shall be in writing and shall be sent postage prepaid by certified or registered mail return receipt requested, or may be forwarded by United States Express Mail Service, or by Federal Express or other private overnight delivery service or by telex or telegram (but not facsimile) provided that a receipt or proof of delivery thereof can be produced, addressed as follows:

To Mortgagee: Southtrust Bank, National Association
420 North 20th Street, 11th Floor
Commercial Real Estate Group
Birmingham, AL 35203

To Tenant: The Gap, Inc.
900 Cherry Avenue
San Bruno, CA 94066
Attention: Real Estate Law Department

To Landlord: Goodman Road/I-55 Development Company, LLC,
an Arkansas Limited Liability Company
c/o Clary Development Corp.
2200 Rodney Parham, Suite 210
Little Rock, AR 72212
Attn: Steve Clary

or to such other address as the parties may designate in writing. All such notices shall be deemed delivered when actually received or refused by the other party.


6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns it

being understood that the obligations herein of Mortgagee shall extend to it in its capacity as mortgagee under the Mortgage and to its successors and assigns, including anyone who shall have succeeded to its interest or to Landlord's interest in the Premises or acquired possession thereof by Foreclosure or otherwise.

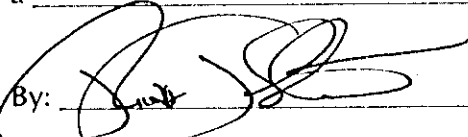
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

MORTGAGEE

WITNESS OR ATTEST:

By: 

SOUTHTRUST BANK, NATIONAL ASSOCIATION
a _____

By: 
Its: CEO

TENANT

Witness or Attest:

By: Cara Karpinger

OLD NAVY (HOLDINGS) INC.,
a California corporation

By: George Blankenship

Title George Blankenship
Vice-President

LANDLORD

Witness or Attest:

By: Jeffrey L. Maxwell

Goodman Road/I-55 Development Company, LLC,
an Arkansas Limited Liability Company
c/o Clary Development Corp.
2200 Rodney Parham, Suite 210
Little Rock, AR 72212
Attn: Steve Clary

By South Lake Centre, LLC,
as Administrator

By Clary Development Corp.
Its: Authorized Member

By: Roger S. Clary
Roger S. Clary, President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) Ss:
 COUNTY OF SAN MATEO)

On _____, 199____, before me, _____, Notary Public, personally appeared _____, personally known to me to or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

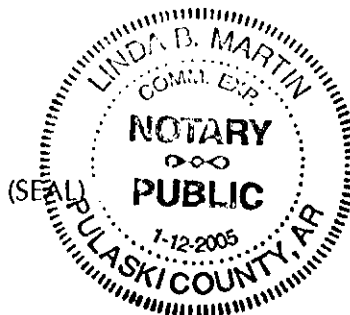
 Notary Public Signature (SEAL)

STATE OF Arkansas)
) Ss:
 COUNTY OF Pulaski)

On 1/3/00, 199____, before me, Linda B. Martin, Notary Public, personally appeared Roger S. Clary, personally known to me to or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Linda B. Martin
 Notary Public Signature

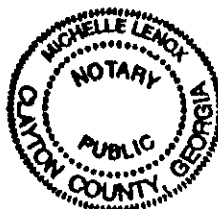


STATE OF Georgia)
) Ss:
 COUNTY OF Fulton)

On February 22, 2003, before me, Michelle Lenox, Notary Public, personally appeared Ron Johnston, personally known to me to or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Michelle Lenox
 Notary Public Signature (SEAL)



My Commission Expires February 23, 2003

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN MATEO)

On December 22, 1999, before me, Josie Garcia, Notary Public, personally appeared George Blankenship, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Josie Garcia (SEAL)
Notary Public Signature

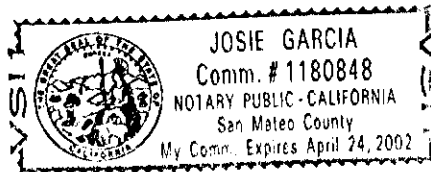


EXHIBIT A

Legal Description

34.2325 acre partition of the remaining Goodman Road Associates, LTD property as recorded at Deed Book 199 Page 93 - Parcel 1 and Deed Book 199 Page 97, said property being in the Northeast Quarter of Section 36, Township 1 South, Range 8 West, in the City of Southaven in DeSoto County, Mississippi.

Commencing at the accepted Northeast corner of Section 36, Township 1 South, Range 8 West, in DeSoto County, Mississippi, being the intersection of the centerline of Goodman Road (Mississippi 302) with the centerline of Airways Boulevard; thence in a Southwestwardly direction, along the centerline of Airways Boulevard (106 foot total Right Of Way as per Plat Book 55 Page 45) and the East line of Section 36, South 00 degrees 03 minutes 32 seconds West, a distance of 341.13 feet to a set ½ inch rebar, being the Northernmost Northeast corner of the remaining Goodman Road Associates, LTD property as recorded at Deed Book 199 Page 93 - Parcel 1 and Deed Book 199 Page 97, which this 34.2325 acre partition is a part, and the "TRUE POINT OF BEGINNING" of said partition, also being the Easternmost Northeast corner of said partition; thence in a Southwestwardly direction, continuing along the proposed centerline of Airways Boulevard (under construction and as evidenced by Plat Book 57 Page 40) and the East line of the remaining Goodman Road Associates, LTD property and said partition, South 00 degrees 03 minutes 32 seconds West, a distance of 1097.14 feet to a set ½ inch rebar, being the Southeast corner of said partition; thence in a Southwestwardly direction, along the South line of this partition, South 89 degrees 53 minutes 21 seconds West, a distance of 1423.54 feet to a set ½ inch rebar, being the Southwest corner of said partition; thence in a Northwestwardly direction, along a West line of this partition, North 00 degrees 06 minutes 39 seconds West, a distance of 98.50 feet to a found ½ inch rebar, being an exterior corner of said partition, and the Southeast corner of Lot 4 of South Lake Commercial Subdivision as recorded at Plat Book 55 Page 44, and the Southwest corner of the Right Of Way for South Crest Parkway as recorded at Plat Book 55 Page 44; thence in a Northeastwardly direction, along a North line of the remaining Goodman Road Associates, LTD property and this partition, also being the South Right Of Way line of South Crest Parkway, North 89 degrees 53 minutes 21 seconds East, a called and measured distance of 90.00 feet (as per Plat Book 55 Page 44) to a set ½ inch rebar, being an interior corner of the remaining Goodman Road Associates, LTD property and this partition, also being the Southeast corner of the Right Of Way for South Crest Parkway; thence in a Northwestwardly direction, along the East Right Of Way line of South Crest Parkway and the West line of the remaining Goodman Road Associates, LTD property and this partition, North 00 degrees 06 minutes 39 seconds West, a distance of 937.96 feet to a set ½ inch rebar, being the Westernmost Northwest corner of said partition; thence in a Southeastwardly direction, along a North line of this partition, along a curve to the left having a radius of 25.00 feet, a delta angle of 90 degrees 00 minutes 00 seconds, an arc length 39.27 feet, a tangent length of 25.00 feet, a chord bearing of South 45 degrees 06 minutes 39 seconds East, and a chord length of 35.36 feet to a set ½ inch rebar, being a point of tangency in said North line; thence in a Northeastwardly direction, continuing along a North line of this partition, the following two (2) courses, North 89 degrees 53 minutes 21 seconds East, a distance of 32.41 feet to a set ½ inch rebar, being an angle point; thence North 81 degrees 38 minutes 16 seconds East, a distance of 521.76 feet to a set ½ inch rebar, being a point of curvature; thence continuing in a Northeastwardly direction, along a West line of this partition, along a curve to the left having a radius of 25.00 feet, a delta angle of 75 degrees 24 minutes 54 seconds, an arc length of 32.91 feet, a tangent length of 19.33 feet, a chord bearing of North 43 degrees 55 minutes 49 seconds East, and a chord length of 30.58 feet to a set ½ inch rebar, being a point of tangency in said West

line; thence continuing in a Northwardly direction, along a West line of this partition, the following two (2) courses, North 06 degrees 13 minutes 22 seconds East, a distance of 160.63 feet to a set ½ inch rebar, being an angle point; thence North 00 degrees 08 minutes 18 seconds West, a distance of 79.85 feet to a set ½ inch rebar, being a point of curvature in said West line; thence in a Northwestwardly direction, along a South line of this partition, along a curve to the left having a radius of 25.00 feet, a delta angle of 91 degrees 04 minutes 07 seconds, an arc length of 39.74 feet, a tangent length of 25.47 feet, a chord bearing of North 45 degrees 40 minutes 22 seconds West, and a chord length of 35.68 feet to a set ½ inch rebar in the South Right Of Way line of Goodman Road (Mississippi 302), and the North line of the remaining Goodman Road Associates, LTD property, being the Northernmost Northwest corner of said partition; thence in a Northeastwardly direction, along the South Right Of Way line of Goodman Road and the North line of the remaining Goodman Road Associates, LTD property and this partition, the following two (2) courses, North 88 degrees 47 minutes 35 seconds East, a distance of 25.61 feet to a found concrete Right Of Way monument, being an angle point; thence North 89 degrees 19 minutes 10 seconds East, a distance of 82.38 feet to a set ½ inch rebar, being the Northernmost Northeast corner of said partition; thence in a Southwestwardly direction, along an East line of this partition, along a curve to the left having a radius of 25.00 feet, a delta angle of 89 degrees 27 minutes 28 seconds, an arc length of 39.03 feet, a tangent length of 24.76 feet, a chord bearing of South 44 degrees 35 minutes 26 seconds West, and a chord length of 35.19 feet to a set ½ inch rebar, being a point of tangency in an East line of said partition; thence in a Southeastwardly direction, along an East line of this partition, South 00 degrees 08 minutes 18 seconds East, a distance of 248.73 feet to a set ½ inch rebar, being an interior corner of said partition; thence in a Northeastwardly direction, along a North line of this partition, North 81 degrees 38 minutes 16 seconds East, a distance of 330.96 feet to a set ½ inch rebar, being an interior corner of said partition; thence in a Northwestwardly direction, along a West line of this partition, North 00 degrees 39 minutes 47 seconds West, a distance of 20.08 feet to a found ¾ inch conduit, being an interior corner of the remaining Goodman Road Associates, LTD property and an exterior corner of said partition, also being the Southwest corner of Lot 6 of The First Addition to South Lake Commercial Subdivision as recorded at Plat Book 55 Page 45; thence in a Northeastwardly direction, along a North line of the remaining Goodman Road Associates, LTD property and this partition, also being a South line of Lot 6, North 89 degrees 31 minutes 00 seconds East, a called distance of 286.55 feet (as per Plat Book 55 Page 45), but a measured distance of 286.61 feet to a found ¾ inch conduit in the West Right Of Way line of Airways Boulevard (106 foot total Right Of Way as per Plat Book 55 Page 45), being an exterior corner of the remaining Goodman Road Associates, LTD property and said partition; thence in a Southwestwardly direction, along the West Right Of Way line of Airways Boulevard and an East line of the Goodman Road Associates, LTD property and this partition, South 00 degrees 03 minutes 32 seconds West, a called and measured distance of 72.67 feet (as per Plat Book 55 Page 45) to a set ½ inch rebar, being an interior corner of the remaining Goodman Road Associates, LTD property and said partition, and the Southwest corner of the Right Of Way for Airways Boulevard; thence in a Northeastwardly direction, along a North line of the remaining Goodman Road Associates, LTD property and this partition, and a South Right Of Way line of Airways Boulevard, North 89 degrees 54 minutes 32 seconds East, a called distance of 53.00 feet (as per Plat Book 55 Page 45), but a measured distance of 52.48 feet to the "TRUE POINT OF BEGINNING" and containing 34.2325 acres, more or less

LESS AND EXCEPT:

Lot 13, South Lake Commercial Subdivision, Third Addition, in the Northeast Quarter of Section 36, Township 1 South, Range 8 West, City of Southaven, DeSoto County, Mississippi, as shown by plat appearing of record in Plat Book 66, Page 8, in the office of the Chancery Clerk of DeSoto County, Mississippi and being more particularly described as follows, to-wit:

Commencing at the northeast corner of said Northeast Quarter; thence West 341.69 feet; thence South 69.54 feet to the South right of way line of Goodman Road (Mississippi Highway No. 302); thence South $89^{\circ}19'03''$ West along said South right of way line 79.89 feet; thence North $88^{\circ}25'04''$ West along said South right of way line 195.80 feet; thence South $89^{\circ}19'10''$ West along said South right of way line 107.55 feet; thence South $88^{\circ}47'35''$ West along said South right of way line 174.44 feet; thence South $81^{\circ}38'55''$ West, along said south right of way line 125.29 feet; thence South $84^{\circ}55'28''$ West along said south right of way line 267.46 feet; thence along said South right of way line along a curve to the left having a radius of 35.00 feet an arc length of 51.95 feet, and a chord bearing and distance of South $42^{\circ}24'25''$ West 47.31 feet to the East right of way line of Southcrest Parkway; thence South $00^{\circ}06'39''$ East along East right of way line 130.00 feet; thence South $08^{\circ}58'46''$ West along said East right of way line 101.27 feet; thence south $00^{\circ}06'39''$ East along said East right of way line 524.99 feet for the Point of Beginning; thence North $89^{\circ}53'21''$ East 215.00 feet; thence South $00^{\circ}06'39''$ East 216.88 feet; thence South $59^{\circ}53'21''$ West 136.24 feet; thence South $89^{\circ}53'21''$ West 97.01 feet to the East right of way line of Southcrest Parkway; thence North $00^{\circ}06'39''$ West along said East right of way line 285.00 feet to the Point of Beginning. Containing 1.31 acres (57,256 Square Feet) more or less.